



JOHN McMAHON, SHERIFF-CORONER



August 9, 2019

MuckRock News
Attn: Emma Best

Re: Public Records Act request

Dear Ms. Best:

The San Bernardino County Sheriff's Department ("Department") has concluded its review of the Public Records Act request, wherein you seek: copies of any Memoranda of Agreement (MOAs), Memoranda of Understanding (MOUs), transfer agreements or delegations of authority with or involving Immigration and Customs Enforcement signed or otherwise put into effect between March 1, 2003 and the present.

The Department has located three (3) pages that may be responsive to your request. Duplication costs have been waived.

Sincerely,

A handwritten signature in black ink, appearing to read "Miles A. Kowalski".

MILES A. KOWALSKI
General Legal Counsel
San Bernardino County Sheriff's Department

MAK/ct

MEMORANDUM OF UNDERSTANDING

Between

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT HOMELAND SECURITY INVESTIGATIONS

and

San Bernardino County Sheriff's Department

regarding

THE DESIGNATION OF San Bernardino County Sheriff's Department EMPLOYEES AS CUSTOMS OFFICERS (EXCEPTED)

1. **PARTIES.** The Parties to this Memorandum of Understanding (MOU) are U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and San Bernardino County Sheriff's Department.

2. **AUTHORITY.** Title 19, United States Code (U.S.C.), Section 1401(i); 19 U.S.C. § 1589a. This MOU is also authorized under the provisions of California Penal Code Section 830.1.

3. **PURPOSE.** The Parties agree that effective enforcement of the laws relating to HSI jurisdiction requires close cooperation and coordination between the two Parties. The Parties have therefore entered into this MOU to govern the use of HSI designations by certain employees of San Bernardino County Sheriff's Department.

Pursuant to section 401(i), Tariff Act of 1930, as amended (19 U.S.C. § 1401(i)), the Secretary of Homeland Security is authorized to designate persons as Customs Officers (Excepted) to perform the duties of a Customs Officer. Within ICE, this authority has been delegated to the HSI Special Agents in Charge. Pursuant to 19 U.S.C. § 1589a, customs officers are authorized to enforce the full range of federal offenses. However, in designating Customs Officers (Excepted), *HSI is not conveying the authority to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, or to perform the functions of an immigration officer.*

There may be instances when HSI determines that it is desirable for certain sworn law enforcement employees of San Bernardino County Sheriff's Department to perform certain HSI duties. This MOU sets forth the agreement and relationship between the Parties with respect to this determination.

4. RESPONSIBILITIES.

The Parties agree as follows:

HSI agrees to:

- a. Designate certain employees of San Bernardino County Sheriff's Department as Customs Officers (Excepted), without additional compensation, to perform the duties as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). This form is attached and is hereby made part of this MOU;
- b. Issue a "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) to each qualified and designated employee;
- c. Provide appropriate training in laws, policies, and procedures to each designated employee;

- d. Advise the designated Customs Officers (Excepted) about court proceedings concerning seizures or arrests made by them in accordance with the authorities granted by HSI contemplated under this MOU; and
- e. Process, under appropriate regulations, any injury claim submitted as a result of injuries occurring to the designated Customs Officers (Excepted) while such individuals are acting pursuant to this MOU, for compensation under the Federal Employee Workers Compensation Act (5 U.S.C. § 8101, *et seq.*).

San Bernardino County Sheriff's Department agrees:

- a. That only sworn law enforcement officers of San Bernardino County Sheriff's Department who successfully complete the appropriate HSI Task Force Officer cross-designation Training Course and receive an approved "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) will be designated as Customs Officers (Excepted);
- b. That each law enforcement officer will be bound by the Authorities Granted and the Endorsements and Restrictions as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001);
- c. To advise HSI of each court proceeding in which the validity of a Customs Officer (Excepted)'s enforcement authority becomes an issue, and allow HSI to provide legal memoranda or other assistance as deemed necessary by HSI;
- d. That agency employees designated as Customs Officers (Excepted) will follow HSI directives and instructions when utilizing enforcement authority conveyed by HSI;
- e. To provide to HSI, before designation of each officer and on an ongoing basis, any derogatory information, or information that may call into question the officer's truthfulness or ability to testify in court; and
- f. To return all HSI-issued equipment and identification when a cross-designated officer terminates employment or when his or her cross-designation expires.

Both Parties agree:

- a. That any abuse of HSI cross-designation authority may lead to the revocation of such cross-designations by HSI; and
- b. To schedule periodic meetings to review this MOU, as required.

5. REPORTING AND DOCUMENTATION. HSI SAC offices will maintain the original signed "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). Copies of this form will be held by the Contraband Smuggling Unit at HSI Headquarters, the designated Customs Officer (Excepted), and San Bernardino County Sheriff's Department.

If applicable, the HSI office will maintain documentation of designated Customs Officers (Excepted) approved to use HSI vehicles and certification that the designated Customs Officers (Excepted) have completed the ICE Fleet Card Training in Virtual University and any other fleet related training.

6. POINTS OF CONTACT.

HSI Office: Los Angeles

Name: David Pike

San Bernardino County Sheriff's Department

Name: Ernie Perez

Title: TFO Coordinator

Address: 501 West Ocean Blvd, Suite 7200
Long Beach, CA 90802

Telephone Number: 562-624-3800

Fax Number: n/a

E-mail Address: david.s.pike@ice.dhs.gov

Title: Lieutenant

Address: 655 East Third Street
San Bernardino, CA 92415

Telephone Number: 909-387-8407

Fax Number: n/a

E-mail Address: eperez@sbcscd.org

7. OTHER PROVISIONS. This MOU is an internal agreement between the Parties and does not confer any rights, privileges, or benefits to any other party or the public.

Nothing in this MOU is intended to conflict with current laws, regulations, or policies of either Party. If a term of this MOU is inconsistent with such authority, that term shall be invalid but the remaining terms and conditions of this MOU shall remain in full force and effect.

Nothing in this MOU is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519.

The forms and authorities referenced herein may be renamed or replaced by HSI without prejudice to this MOU.

8. EFFECTIVE DATE. The terms of this MOU will become effective on the date the last Party signs the MOU. The Designation Form of each Customs Officer (Excepted) is effective per the date on that document.

9. MODIFICATION. This MOU may be amended by the written concurrence of both Parties.

10. TERMINATION. This MOU may be terminated by either Party upon a 30-day written notification to the other Party.

APPROVED BY:

Joseph Macias
Name of HSI Official

Special Agent in Charge
Title of HSI Official
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

Date

5/1/2018

John McMahon

Name of San Bernardino County Sheriff's Department's Official

Sheriff

Title of San Bernardino County Sheriff's Department's Official
San Bernardino County Sheriff's Department

Date

2/20/18

San Bernardino County Sheriff
PRA Office
655 East 3rd Street
San Bernardino, CA 92408

June 25, 2019

This request was originally submitted via email to sgarcez@sbcasd.org (error). It was never acknowledged. Due to issues with the original communication method, we are now directing this request to you.

To Whom It May Concern:

Pursuant to the California Public Records Act, I hereby request the following records:

Copies of any Memoranda of Agreement (MOAs), Memoranda of Understanding (MOUs), memoranda of agreement or other liaison, information sharing or prisoner/detainee transfer agreements or delegations of authority with or involving Immigration and Customs Enforcement signed or otherwise put into effect between March 1, 2003 and the present. This includes but is not limited to any agreements entered into under or a result of Section 287(g) of the Immigration and Nationality Act.

I am a member of the news media and request classification as such. I have previously written about the government and its activities, with some reaching over 100,000 readers. As such, as I have a reasonable expectation of publication and my editorial and writing skills are well established. In addition, I discuss and comment on the files online and make them available through non-profits such as the Internet Archive and MuckRock, disseminating them to a large audience. While my research is not limited to this, a great deal of it, including this, focuses on the activities and attitudes of the government itself. As such, it is not necessary for me to demonstrate the relevance of this particular subject in advance.

As my primary purpose is to inform about government activities by reporting on it and making the raw data available, I request that fees be waived.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 calendar days, as the statute requires.

Sincerely,

Emma Best

Filed via MuckRock.com
E-mail (Preferred): 75981-66675262@requests.muckrock.com

For mailed responses, please address (see note):

MuckRock News
DEPT MR 75981
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.